IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11465 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ROOPMATI M.P.HANDLOOM WEAVERS CO-OP.SOCI. LTD. - Petitioner(s)

Versus

HARBALA PRANJIVAN TRIVEDI - Respondent(s)

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Appearance :

MR SJ GAEKWAD for Petitioner(s) : 1,
MR GM JOSHI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 31/08/2005

CAV JUDGMENT

1.By filing this petition, the petitioner has prayed to issue a writ of certiorari or any other writ, order or direction directing the respondent to treat the award

and orders dated 11.3.2004 and 21.7.2004 passed in Reference (LCA) No. 1405 of 1994 and Misc. Application No. 145 of 2004 in Reference (LCA) No. 1405 of 1994 as null and void and not effective and to quash and set aside the same.

2. It appears from the record that the petitioner – Roopmati M.P.Handloom Weavers Cooperative Society Ltd., is a cooperative society registered under the Madhya Pradesh Cooperative Societies Act, 1960 ("the State Act" for short), the head office of which is situated at Jabalpur, Madhya Pradesh and Saree Emporium of the society is situated in Kamdhenu Complex, Ambawadi at Ahmedabad.

3. It appears from the record that the respondent – Smt.Harbala Pranjivan Trivedi was appointed as Sales Assistant and was paid Rs.900/- as salary per month. She was working at Saree Emporium of the society situated at Ahmedabad. It is the case of the petitioner that she voluntarily resigned from her service with effect from 7.1.1994 and, thereafter she raised the industrial dispute alleging that her services were terminated illegally and without complying with the provisions of the Industrial Disputes Act, 1947 ("the Act" for short). The said reference was registered as

Reference (LCA) No. 1405 of 1994. Ultimately, the Labour Court, Ahmedabad allowed the said reference by order dated 11.03.2004 by which the petitioner – society was directed to reinstate the respondent in service with 50% back wages and continuity of service.

4. It appears from the record that the petitioner – society thereafter filed Misc. Application No. 145 of 2004 under Rule 26-A of the Industrial Disputes (Gujarat)Rules, 1966 (“the Rules” for short) for setting aside ex-parte award passed by the Labour Court, Ahmedabad against the petitioner – society. The said Misc. Application was also rejected by the Labour Court, Ahmedabad by order dated 21.07.2004. Being aggrieved by the said award and order, the petitioner – society has filed this petition under Article 226/227 of the Constitution of India.

5. Heard the learned advocates for the parties.

6. Mr.S.J.Gaekwad, learned advocate appearing for the petitioner has mainly contended that the Labour Court, Ahmedabad has no jurisdiction to entertain and decide the reference in view of the provisions of Section 64 read with Section 55 of the State Act. In support of his contention, Mr.Gaekwad has relied upon the decision of the Apex Court in the case of R.C.Tiwari V/s

M.P.Cooperative Marketing Federation Limited, reported in (1997) 5 SCC 125 and also the decision of the Apex Court in the case of Sagarmal V/s District Sahkari Kendriya Bank Ltd., Mandsaur, reported in (1997) 9 SCC 354 as well as other judgments of the High Court of Madhya Pradesh. It is submitted by the learned advocate appearing for the petitioner that the respondent has failed to prove that she has served with the petitioner – society for 240 days during the preceding 12 months prior to the alleged date of termination of service and, therefore, it cannot be said that the order of termination was passed in contravention of the provisions of Section 25-F of the Act. It is, therefore, requested to allow the present petition.

7. Affidavit-in-reply is filed by the respondent and has opposed this petition. It is the main contention of the respondent that the petitioner's society is a Multi State Cooperative Society and, therefore, the jurisdiction of the Labour Court was not ousted. It is submitted by the learned advocate appearing for the respondent Mr.Joshi that the present petition is filed under Article 227 of the Constitution of India and the Presiding Officer of the Labour Court is not joined as

a party respondent. It is submitted that as observed by this Court in the judgment reported in 2004(1) GLR 729 in para 34 that when the Tribunal or the Labour Court is not joined as a party, the petition becomes essentially a petition under Article 226 of the Constitution of India and, therefore, the present petition deserves to be dismissed. He submitted that the Registrar, Cooperative Societies of the State of Madhya Pradesh would not have jurisdiction to entertain the case of an employee employed in the State of Gujarat and that such a contention was required to be taken at the first instance when the dispute was taken for conciliation by the Conciliation Officer under the Act and having not done so, the petitioner has no right to take such a contention in this petition under Article 227 of the Constitution of India.

8. The question which is required to be decided in this petition is, whether the petitioner – society is a cooperative society registered under the Madhya Pradesh Cooperative Societies Act, 1960 or not. It is also required to be decided, whether the petitioner – society is converted into Multi State Cooperative Societies Act (“the Central Act” for short) or not.

9. The petitioner – society has produced the copies of

registration certificate and bye-laws of the petitioner – society at page 41 and 42 in the compilation along with the rejoinder affidavit. It can be seen from the registration certificate at page 41 that the petitioner – society is registered under the provisions of the State Act. It can further be seen from bye-law no.2.7 produced at page 42 which permits the society to open sales depots for promoting the sale of handloom sarees etc. manufactured by the society.

10. Section 22 of the Central Act deals with the conversion of a cooperative society into Multi State Cooperative Society. Sub-Section (1) provides that a cooperative society by an amendment of its bye-laws extend its jurisdiction and convert itself into a Multi State Cooperative Society. Proviso to Section 22 provides that no such amendment of bye-laws of a cooperative society shall be valid unless it has been registered by the Central Registrar. Sub-section (2) of Section 22 confers power on the Central Registrar to register the bye-laws under the Central Act after consulting the Registrars of Cooperative Societies of the states concerned. Proviso to sub-section (2) provides that no cooperative society shall be deemed to have been converted into a Multi State Cooperative

Society on any ground whatsoever unless such society is registered as a Multi State Cooperative Society.

11. In the present case, it is not established that the petitioner is a Multi State Cooperative Society registered under the Central Act and no registration certificate issued by the Registrar under the Central Act either of 1984 or 2002 is produced by the respondent. In this view of the matter, in view of the provisions of the Central Act, the petitioner – society cannot be deemed to have been converted into Multi State Cooperative Society and, therefore, the provisions of the State Act are applicable to the petitioner – society.

12. The next contention of the learned advocate appearing on behalf of the respondent is that the Labour Court, Ahmedabad is not impleaded as one of the respondents and, therefore, the present petition cannot be entertained under Article 226 of the Constitution of India. It is required to be noted that no allegations are made and no relief is sought against the Labour Court. At this stage, reference is required to be made to the decision reported in AIR 1964 SC 477, wherein the Apex Court has observed that in a writ petition and in appeals from orders passed on the petitions, the

Tribunals may be proper and necessary parties but unless allegations are made against them which need a reply from them, it is not usual for the authorities to be represented by lawyers in the Court. In ordinary cases, their position is like that of Courts or other Tribunals against whose decisions writ proceedings are filed ; they are not interested in the merits of the dispute in any sense, and so, their representation by lawyers in such proceedings is wholly unnecessary and even inappropriate. It is also required to be noted that the Apex Court in the case of Savitri Devi V/s District Judge, Gorakhpur, reported in 1999 AIR SCW 597 has depricated the practice of impleading judicial officers who disposed of the civil proceedings as parties to the proceedings under Article 226 or Special Leave Petition under Article 136 of the Constitution of India. In that view of the matter, since no relief is sought against the Labour Court, it was not necessary to implead the Labour Court as party – respondent.

13.The Apex Court in R.C.Tiwari (supra) has held that in view of the provisions of Section 55 read with 64 of the State Act, the jurisdiction of the Labour Court to entertain the reference under Section 10 of the Act is ousted. The same view has been taken by the Apex Court

in the subsequent case of Sagarmal (supra).

14.In this view of the matter, the jurisdiction of the Labour Court to entertain reference under Section 10 of the Act is ousted. It is also required to be noted that in view of the provisions of Section 55 read with 64 of the State Act, the Labour Court, Ahmedabad had no jurisdiction to entertain and decide the reference in question. Hence, the award passed by the Labour Court, Ahmedabad is nullity and non est in eye of law.

15.It is also required to be noted that the petitioner – society is entitled to raise the contention regarding jurisdiction in the present petition. Simply because no such contention was raised before the Labour Court, the petitioner – society cannot be estopped from raising the said contention in the present case. It is now well settled that, it is a fundamental principle well established that a decree passed by a Court without jurisdiction is nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the very authority of the court

to pass any decree, and such a defect cannot be cured even by consent of the parties. It is, therefore, clear that competence of the court to try a case goes to the very root of the jurisdiction and where it is lacking, it is a case of inherent lack of jurisdiction. It is now well settled that where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, non est and void ab initio. A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. The validity of such decree or order can be challenged at any stage even in exclusive or in collateral proceedings.

16. In view of the aforesaid discussion, the Labour Court, Ahmedabad had no jurisdiction to entertain the reference in view of the provisions of Section 55 read with Section 64 of the State Act. Since the jurisdiction of the Labour Court was ousted, the award passed by the Labour Court is without jurisdiction and hence nullity and, since the award passed by the Labour Court is nullity, the same can be challenged in any collateral proceedings or in execution proceedings even though the contention regarding the jurisdiction was

not raised before the Labour Court.

17.In this view of the matter, the award passed by the Labour Court, Ahmedabad in Reference (LCA) No. 1405 of 1994 dated 11.03.2004 and the order dated 21.07.2004 in Misc.Application No. 145 of 2004 in Reference (LCA) No. 1405 of 1994 deserve to be quashed and set aside. Accordingly, this petition is allowed. The award passed in Reference (LCA) No. 1405 of 1994 dated 11.03.2004 and the order dated 21.07.2004 in Misc.Application No. 145 of 2004 in Reference (LCA) No. 1405 of 1994 passed by the Labour Court, Ahmedabad are quashed and set aside.

(SHARAD D DAVE, J)

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